

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.568 OF 2004

Smt. Janabai Ramchandra Desai ..Petitioner.

Vs.

The State of Maharashtra & Ors. ..
Respondents.

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Dr. V.K. Choudhari for the Petitioner.

Mr. V.P. Malwankar, Assistant Government Pleader for
Respondent Nos.1 to 3.

Mr. M. B. Mehre for Respondent No.4.

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**CORAM: KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.**

18th April, 2006.

P.C. :

1. The Petitioner who is the widow of Ramchandra Desai who was working as a primary teacher has filed this Petition for quashing and setting aside the letter dated 9th August, 2002 issued by Respondent No.5, Satara Zillha Parishad, Education Department, (Primary), Satara and has also sought a direction to the competent authority and the Government of Maharashtra to grant pension and pensionary benefits to her with effect from 24th April, 1957 i.e with effect from the date of the resignation submitted by her husband, computing the service of 19 years

approximately.

2. It is the case of the Petitioner that her husband served as a primary teacher with Respondent No.5 from 1st June, 1938 to 24th April, 1957. According to the Petitioner, her husband was required to step down from the said services as he suffered from Paralysis and it was certified by the District Civil Surgeon that he was unfit for services due to the said disease. Thus, the husband of the Petitioner served as a primary teacher about 19 years, to be more precise for 18 years and 10 months. It appears that when the Petitioner's husband retired in 1957, there was no pension scheme for the primary teachers and therefore, the husband of the Petitioner received the amount of his provident fund. Since the establishment of the Maharashtra State on 1st May, 1960, the primary teachers were also granted pension, instead of provident fund. According to the Petitioner since her husband was bedridden, he was unaware about the scheme of the Government, he applied for the grant of the pension. On the death of her husband on 21st May, 1987, the Petitioner being illiterate, under the guidance of the Karad Taluka Pensioners' Association, she approached to Respondent No.4 for family pension. It appears that

on 25th May, 1998 she again applied to Respondent No.4 to consider her claim for family pension. By a subsequent letter dated 16th April, 2001, the Petitioner has again requested Respondent No.4 to consider her claim for pension. She received a reply to the effect that her case is pending. It appears that the Petitioner was finally replied by Respondent No.5 on 9th August, 2002 wherein it is stated that since the husband of the Petitioner has taken the amount of Provident Fund, he is not entitled for pension and therefore also the benefit of family pension cannot be given to her. Hence, the present Petition.

3. We have heard learned counsel for the parties. We have also gone through the relevant provisions. Though the Petition is at a very belated stage, however, the claim of the Petitioner is required to be considered under Rule 23 of the Maharashtra Civil Services (Pension) Rules, 1993 which gives a discretion to the Government to sanction the grant of pension in the most exceptional circumstances. Considering the fact that the husband of the Petitioner has completed 18 years and 10th months service, and could not continue the service because of paralytic stroke and has to remain as bedridden for years, he could not opt for the

pensionary benefits. Apart from that, the Petitioner being an illiterate, could not get proper advice and has remained pensionless for all these years, in our opinion, the Petitioner requires a sympathetic consideration. The learned counsel rightly seeks to withdraw this Petition with a view to approach to the concerned department of the State Government with a request to get the pensionary benefits. We are sure that as and when such an application is made, the same shall be considered keeping in view the observations made herein above. The learned counsel appearing for the Petitioner states that the Petitioner shall make an application within two weeks. The Petitioner being 80 years of age, the concerned department shall consider the same and pass appropriate orders within six weeks of the receipt of the application and shall communicate its decision within four weeks thereafter. With these observations, the Petition is disposed of.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)